

Obviousness Rejection

Applicants respectfully disagree with the grounds of the obviousness rejection of claims over Payn.

Payn alleges a polymer/monomer ("PM") formulation that can be substituted for polyvinyl chloride-based products predominantly for application to a fabric substrate. At column 15, lines 39-55, the reference alleges a two phase composition where phase A contains about 30 - 80 weight % polyalkene resin and phase B fluid contains about 70-20 weight % of the second polymeric phase. The reference also discloses that the second polymeric phase may be 90/10 blend of lauryl methacrylate, trimethyolpropane triacrylate, blends of from 99 to 60 weight % of a monofunctional monomer and from 1 to 40% of a polyfunctional monomer, the monofunctional monomers including acrylate and methacrylate esters of alkyl alcohols that contain 8 or more carbon atoms, vinyl esters of alkyl acids that contain 8 or more carbon atoms, alpha olefins with 10 or more carbon atoms. . . .

As the Examiner pointed out, Payn does not disclose or suggest, among others:

- A homogeneous floor covering comprising a cross-linkable, elastomer material having a multicolored, directionless pattern, and a thickness of 1.5 to 3.5 mm, the floor covering, in the case of floor covering having widths of 1 m to 2 m, has no change in thickness exceeding + 5% over its entire width; and
- the floor covering that has a minimum elongation of 60% according to DIN 53 504.

Applicants respectfully submit that Payn also fails to specifically disclose:

- 3 to 20 percent by weight, with respect to the floor covering's total weight, of a copolymer of ethylene including at least one comonomer

selected from the group consisting of vinyl esters of saturated carboxylic acids having up to 4 C-atoms in the acid group, unsaturated mono- or dicarboxylic acids, esters of unsaturated mono- or dicarboxylic acids having up to 8 C-atoms in the alcohol portion, and  $\alpha$ -olefins having 4 to 10 C-atoms.

Payn provides a long list of ingredients that can be interchangeably used to produce its alleged polymer material. The exemplary embodiments of Payn do not disclose or suggest the claimed composition. Moreover, Payn suggests throughout the specification and the exemplary embodiments that its product is particularly suited for fluid application to a fabric substrate. See, for example, column 11, line 45 to column 13, line 63. See also Background of the Invention where Payn discusses the disadvantages of the conventional textile coating material. Thus, the coated fabric substrate of Payn is not necessarily identical or even similar to floor covering material disclosed and claimed by Applicants. An ordinary skill artisan contemplating the problem addressed by Applicants would not have looked to Payn.

The Examiner alleges that the claimed "ranges and percentages are properties which can be easily determined by one of ordinary skill in the art" and "it is obvious to modify the conditions of a composition because they are merely the result of routine experimentation." These and other conclusory statements are not supported by any suggestion in the reference nor do they adequately address motivation to combine. The factual question of motivation to combine is material to patentability, "and cannot be resolved on subjective belief and unknown authority." In re Sang Su Lee; 61 USPQ 2d 1430, 1434 (Fed. Cir. January 18, 2002.)

In establishing a *prima facie* case of obviousness it is not enough to cite a long list of ingredient and conclude that one of ordinary skill in the art would have selected the specifically-claimed ingredients (some of which may

not be disclosed in the reference) and would have selectively adjusted certain variables to arrive at the claimed invention. This reasoning is even more tenuous where, as in the instant case, the reference is directed to a product different than that claimed by Applicants. Finally, the Examiner's allegation concerning experimental modification of prior art to optimize operation conditions is unsupported. It is noted that only result-effective variables can be optimized and a particular parameter must first be recognized as a result-effective variable before any such assertion can be made. See MPEP § 2144.05 (II)(B). The Office Action does not explain which of the so-called "ranges and percentages" are result effective and subject to optimization.

For at least these reasons, Applicants respectfully submit that a *prima facie* case of obviousness has not been established. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of claim 1 over Payn.

Each of claims 2, 3, 5 and 6 depends either directly or indirectly from claim 1. Accordingly, each of claims 2, 3, 5 and 6 is deemed patentable by the virtue of its dependence from claim 1, which as discussed, is patentable over the art of record. For this reason, additional justifications for patentability of each of claims 2, 3, 5 and 6 will not be proffered here. Reconsideration and withdrawal of the obviousness rejection of claims 1-3 and 5-6 are respectfully requested.

#### CONCLUSION

The claims are deemed in condition for allowance and an early notice to this effect is respectfully solicited.

The Examiner is invited to contact the undersigned attorney if a telephonic communication is believed to be helpful in advancing the examination of the present application.

The Office is hereby authorized to charge any additional fees or credit  
any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No.  
11-0600.

Respectfully Submitted,  
KENYON & KENYON

Dated: September 6, 2002

By: 

KENYON & KENYON

By: Richard M. Rosati

Reg. No. 31,792

One Broadway  
New York, NY 10004-1050  
(212) 908-6463

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**V rsi n with Markings to Sh w Changes Made**

**IN THE CLAIMS:**

Please cancel claim 4 without prejudice or disclaimer and amend the claims as follows:

1. (AMENDED) A homogeneous floor covering comprising a cross-linkable, elastomer material, having a multicolored, directionless pattern, and a thickness of 1.5 to 3.5 mm, characterized in that the floor covering, in the case of floor covering having widths of 1 m to 2 m, has no change in thickness exceeding + 5% over its entire width, that the floor covering has a minimum elongation of 60% according to DIN 53 504 (tensile test), and that it the floor covering contains 3 to 20 per cent percent by weight, with respect to the floor covering's its total weight, of a copolymer of ethylene including at least one comonomer selected from the group consisting of
  - vinyl esters of saturated carboxylic acids having up to 4 C-atoms in the acid group,
  - unsaturated mono- or dicarboxylic acids,
  - esters of unsaturated mono- or dicarboxylic acids having up to 8 C-atoms in the alcohol portion, or and
  - $\alpha$ -olefins having 4 to 10 C-atoms,the ethylene content of the copolymer being 40 to 95 per cent by weight, the comonomer co-monomer content 5 to 60 per cent by weight, and the melt-flow index of the copolymer lying between 0.1 and 50.
2. (AMENDED) The floor covering according to claim 1, wherein it the floor covering contains 3 to 10 per cent by weight of a copolymer.
3. (AMENDED) The floor covering according to claim 1, wherein the a plurality of granular particles forming it form the floor covering, the

granular particles have a single color-in and of themselves.

5. (AMENDED) The floor covering according to claim 1, wherein a plurality of the granular particles forming it form the floor covering, the granular particles have a colored pattern-in and of themselves.
6. (AMENDED) The floor covering according to claim 2, wherein the granular particles forming it the floor covering have a colored pattern in and of themselves.